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Paper 24

Filed by: Trial Section Merits Panel
Box Interference
Washington, D.C. 20231
Tel: 703-308-9797
Fax: 703-305-0942

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

WILLIAM SOLOMON
Junior Party,
(Patent 5,388,154),

v.

SATYASI BHAGAVATULA
Senior Party
(Application 08/324,849).

Patent Interference No. 103,790

Before: McKELVEY, Senior Administrative Patent Judge, and SCHAFER and LEE, Administrative Patent Judges.

PER CURIAM.

FINAL JUDGMENT

A. Introduction

The parties have filed preliminary statements and have included with those statements affidavits asserted to support their respective cases for priority. The preliminary statements have been opened and

made of record in the interference file. No preliminary motions have been filed. The parties have also indicated that they have entered into a settlement agreement and request that priority be decided based upon the submissions already of record without briefing. Cross-examination of declarants and oral argument of the parties have been waived. While highly unusual, in this particular case we are willing to decide priority because the number of issues and the record to be reviewed are so limited.

B. The Subject Matter of the interference

This interference involves telephone dialing devices having dual key pads. An example of one of the keypads is the familiar 12-key pad used on modern telephones. These keypads have keys labeled with the numbers 1-9, 0, * and #. Pushing a button on the key pad results in a tone or pulse which is sent to and recognized by the telephone network. A typical 12-key telephone keypad is also labeled with letters. Thus, the "2-key" also has the letters "ABC." These letters may also be used to make phone numbers easier to remember. For example, the phone number 1-800-FLOWERS is probably easier to remember than its numeric equivalent, 1-800-356-9377. According to the parties, while these alphabetic phone numbers are easier to remember, the arrangement of the letters on the conventional key pad leads to dialing difficulties. Bhagavatula Specification, p. 1, lines 31-36; Solomon Specification, p. 2, lines 1-8. To address this problem both parties use a second alphabetic key pad. The second key pad has one key for each letter. Bhagavatula shows a keypad having 24 keys laid out in alphabetical order (excluding the letters Q and Z which are not used on a standard telephone). Solomon shows an alphabetic key pad having 26 keys laid out in the conventional "QWERTY" arrangement used on typewriters and computer keyboards. The alphabetic keys are related and interconnected to the numeric keys so that pressing, for example, the A, B or C-keys on the alphabetic key board results in the generation of the same tone or pulse as pressing the 2-key. This dual key pad arrangement, say the parties, simplifies dialing of alphabetically defined phone numbers.

Count 1, the sole count in the interference, follows:

Count 1

A telephone station set according to claim 1 of Bhagavatula application 08/324,849;

or

A telephone station set according to claim 5 of Bhagavatula application 08/324,849;

or

A telephone set according to claim 7 of Bhagavatula application 08/324,849;

or

A telephone dialing apparatus according to claim 9 of Bhagavatula application 08/324,849;

or

A telephone dialing apparatus according to claim 10 of Bhagavatula application 08/324,849;

or

A alphabetic keyboard device according to claim 14 of Bhagavatula application 08/324,849;

or

A telephone dialing method according to claim 19 of Bhagavatula application 08/324,849;

or

A telephone dialing apparatus according to claim 1 of Solomon patent 5,388,154;

or

A alphabetic keyboard device according to claim 6 of Solomon patent 5,388,154;

or

A telephone dialing method according to claim 11 of Solomon patent 5,388,154.

The parties claims which are alternatives of Count 1 are reproduced below with paragraphing and indentation added:

Bhagavatula Claim 1

A telephone station set connectable to a network comprising:

a tone generator,
said tone generator generating a plurality of tones;

a numeric keypad directly connected to said tone generator; and

a character keypad directly connected to said tone generator,
said character keypad being separate from said numeric keypad;

said numeric keypad having a plurality of numeric buttons,
each of said numeric buttons directly connected to said tone generator such that a unique dual-tone-multi-frequency (DTMF) tone pair preselected from said plurality of tones and associated with said each numeric button is sent to said network on activation of said each of said numeric buttons;

said character keypad having a plurality of character buttons
greater in number than said plurality of numeric buttons,

each of said plurality of character buttons directly connected to said tone generator such that a DTMF tone pair at said tone generator,

said tone pair corresponding to one of said unique DTMF tone pairs associated with one of said numeric buttons, is sent to said network on activation of said each of said plurality of character buttons.

Bhagavatula Claim 5

A telephone station set connectable to a telephone network, said telephone comprising:

a base;

a plurality of buttons on said base,

each of said plurality of buttons causing an output to said network when pressed;

said plurality of buttons being organized into a plurality of button groups, each button group comprising selected ones of said plurality of buttons,

every button in each of said button groups causing the same output to said network when pressed; and

buttons in different ones of said plurality of button groups causing different outputs to said network when pressed.

Bhagavatula Claim 7

A telephone set comprising:

a tone generator,

a numeric keypad

having a plurality of first buttons;

connection means

for interconnecting each of said first buttons to said tone generator and for delivering directly to said tone generator, in response to activation of each one of said first buttons, a distinct indication identifying the one first button;

said tone generator producing, in response to each said distinct indication, a dual tone multi-frequency output, unique to the identified first button;

a character keypad having a plurality of second buttons;

each of said second buttons being connected directly to the connection means interconnecting each of said first buttons to said tone generator, such that activation of each of said second buttons produces one of said distinct indications unique to one of said first buttons, and

such that activation of any one of a subset of said second buttons produces the same one of said distinct indications.

Bhagavatula Claim 9

A telephone dialing apparatus for transmitting dialing signals over a communication path connecting a telephone to a switching office, the apparatus comprising:

a telephone dialing circuit having

a plurality of first inputs,

plurality of second inputs and

an output,

connections between one of said first inputs and one of said second inputs generating a dual-tone-multi-frequency (DTMF) telephone dialing signal;

a numeric keypad directly connected to said telephone dialing circuit;

an alphabetic keyboard device directly connected to said telephone dialing circuit;

said numeric keypad having numeric keys each of which connect one of said first inputs and one of said second inputs together at said telephone dialing circuit to generate the dialing signal at the output of said telephone dialing circuit;

said alphabetic keyboard device having a plurality of switch contacts each corresponding to a single letter of the alphabet assigned to an alphabetic key, which switch contacts connect one of said first inputs and one of said second inputs together at said telephone dialing circuit to

generate the dialing signal at the output of said dialing circuit,

said alphabetic keyboard device being connected to said first and second inputs in accordance with predetermined mapping of alphabetic representation to numeric keys provided on a standard 12-key telephone keypad

by assigning a single letter to each of said alphabetic keys for generating the dialing signal at the output of said dialing circuit; and

means for coupling the telephone dialing signal from the output of said telephone dialing circuit to the communication path.

Bhagavatula Claim 10 which is identical to Solomon Claim 1

A telephone dialing apparatus for sending dialing signals over a communication path connecting a telephone to a switching office, the apparatus comprising:

a telephone dialing circuit having

plural first inputs,

plural second inputs and

an output,

connections between one of said first inputs and one of said second inputs generating a telephone dialing signal at the output in accordance with a predetermined telephone dialing plan;

an alphabetic keyboard device having

a plurality of switch contacts

each corresponding to a single letter of the alphabet assigned to an alphabetic key,

which switch contacts connect one of said first inputs and one of said second inputs together at said telephone dialing circuit to generate the dialing signal at the output of said dialing circuit,

said alphabetic keyboard device being connected to said first and second inputs in accordance with predetermined mapping of alphabetic representations to numeric keys provided on a standard 12-key telephone keypad

by assigning a single letter to each of said alphabetic keys for generating the dialing signal at the output of said dialing circuit; and

means for coupling the telephone dialing circuit from the output of said telephone dialing circuit to the communication path.

Bhagavatula Claim 14 which is identical to Solomon Claim 6

An alphabetic keyboard device for use with a telephone dialing circuit having

plural first inputs and

plural second inputs,

the keyboard device comprising

a plurality of switch contacts

each corresponding to a single letter of the alphabet assigned to an alphabetic key,

which switch contacts are connectable with one of the first inputs and with one of the second inputs of the dialing circuit

to connect said one of the first inputs and said one of the second inputs together,

said alphabetic keyboard device being connected to said first and second inputs in accordance with predetermined mapping of alphabetic representations to numeric keys provided on a standard 12-key telephone keypad

by assigning a single letter to each of said alphabetic keys for generating the dialing signal at the output of said dialing circuit.

Bhagavatula Claim 19 which is identical to Solomon Claim 11

A telephone dialing method comprising the steps of:

providing an alphabetic keyboard

having a single alphabetic letter assigned to one of a plurality of switch contacts,

each alphabetic key of the alphabetic keyboard corresponding to different letters thereon;

relating each key of the alphabetic keyboard to a numeric digit in accordance with a predetermined dialing plan;

connecting the switch contacts in accordance with predetermined mapping of alphabetic representations to numeric keys provided on a standard 12-key telephone keypad by assigning a single letter to each of said alphabetic keys; and

generating a telephone dialing signal responsive to depression of a key on said alphabetic keyboard and said connecting step, said signal corresponding to a numeric digit determined according to said providing step.

C. Count interpretation

In order for a party to prove conception or actual reduction to practice, the party must show conception or actual reduction to practice of an embodiment within the scope of the count. The count is in an alternative format incorporating by reference certain claims of each party. In this format, a party must show conception or actual reduction to practice of an embodiment falling within at least one of the alternatives of the count. An embodiment falls within the scope of a count if it meets all the limitations of at least one of the claim alternatives of the count.

D. Solomon's Case for Priority

Our deliberations have considered all of Solomon's submissions. A listing of them follows:

1. Preliminary Statement of William Solomon[1] with attached exhibits A-E; and

2. Declaration of Miroslaba Recalde with attached exhibits A and B.

1. The burden and standard of proof

As the junior party, Solomon bares the burden of proof on the issue of priority. 37 CFR § 1.657(b); Bosies v. Benedict, 27 F.3d 539, 541, 30 USPQ2d 1862, 1863 (Fed. Cir. 1994); Oka v. Youssefyeh, 849 F.2d 581, 584, 7 USPQ2d 1169, 1172 (Fed. Cir. 1988). "It is well settled that where an interference is between a patent that issued on an application that was copending with an interfering application, the applicable standard of proof is preponderance of the evidence." Bosies, 27 F.3d at 541-42, 30 USPQ2d at 1864, see also Peeler v. Miller, 535 F.2d 647, 651 n.5, 190 USPQ 117, 120 n.5

[1] While 37 CFR § 1.629(e) provides that "preliminary statement shall not be used as evidence on behalf of the party filing the statement," under the particular facts of this interference and because Solomon's preliminary statement is the form of a declaration, we will consider the declaration as part of the priority case. Many allegations in a preliminary statement are statements of conclusions of law. To the extent the preliminary statement alleges conclusions of law, we have considered the preliminary statement to be an argument.

(CCPA 1976); Linkow v. Linkow, 517 F.2d 1370, 1373, 186 USPQ 223, 225 (CCPA 1975); Frilette v. Kimberlin, 412 F.2d 1390, 1391, 162 USPQ 148, 149 (CCPA 1969), cert. denied, 396 U.S. 1002 (1970). Since the applications were copending the applicable standard of proof is preponderance of the evidence.

2. Actual Reduction to Practice

An actual reduction to practice requires proof of the existence of a physical embodiment within the scope of the count. Correge v. Murphy , 705 F.2d 1326, 1329, 217 USPQ 753, 755 (Fed. Cir. 1983); 1 C. Rivise & A. Caesar, Interference Law and Practice § 137 (1940). The embodiment relied upon for an actual reduction to practice must include every limitation stated in the count. Schendel v. Curtis, 83 F.3d 1399,1402, 38 USPQ2d 1743, 1746 (Fed. Cir. 1996); Newkirk v. Lulejian, 825 F.2d 1581, 1582-83, 3 USPQ2d 1793, 1794 (Fed. Cir. 1987); Hummer v. Administrator of National Aeronautics & Space Administration, 500 F.2d 1383, 1387, 183 USPQ 45, 48 (CCPA 1974) (the device must include every count limitation); Szekely v. Metcalf, 455 F.2d 1393, 1396, 173 USPQ 116, 119 (CCPA 1972) (all the limitations of the counts have to be satisfied). The evidence must also show that the embodiment is suitable for and actually worked for its intended purpose. Mahurkar, 79 F.3d at 1578, 38 USPQ2d at 1291; Scott v. Finney, 34 F.3d 1058, 1061, 32 USPQ2d 1115, 1118 (Fed. Cir. 1994); Newkirk, 825 F.2d at 1583, 3 USPQ2d at 1794; Wiesner v. Weigert, 666 F.2d 582, 588, 212 USPQ 721, 726 (CCPA 1981). In other words, the embodiment must have a practical utility. Fujikawa, 93 F.3d at 1563, 39 USPQ2d at 1898-99. Testing need not show utility beyond a possibility of failure, but only utility beyond a probability of failure. Scott, 34 F.3d at 1061062, 32 USPQ2d at 1118; Taylor v. Swingle , 136 F.2d 914, 917, 58 USPQ 468, 471 (CCPA 1943). And there is no requirement that the embodiment be in a "commercially satisfactory stage of development" to constitute a reduction to practice. Scott, 34 F.3d at 1063, 32 USPQ2d at 1118; DSL Dynamic Sciences Ltd. v. Union Switch & Signal Inc., 928 F.2d 1122 , 1126, 18 USPQ2d 1152, 1155 (Fed. Cir. 1991); King Instrument Corp. v. Otari Corp., 767 F.2d 853, 861, 226 USPQ 402, 407 (Fed. Cir. 1985); Randolph v. Shoberg, 590 F.2d 923, 926, 200 USPQ 647, 649-50 (CCPA 1979).

Solomon testifies that:

> 6. A working prototype of my invention was completed prior to October 19, 1992. Photographs of my working prototype are attached hereto as Exhibit C.
> 7. The working prototype referred to above is still within my possession and control.
> 8. On October 19, 1992, I used the prototype of my alphabetic telephone dialing apparatus to order flowers for my wife's birthday.

Preliminary Statement of William Solomon, p. 2. Exhibit C is two color photographs. The photographs show two different views of what appears to be a conventional telephone having 12 push button keys, a standard computer keyboard and a blue cable which appears to connect the key board to the phone. The actual connections of the phone and the keyboard to the cable are not visible.

Miroslaba Recalde testified that

> 5. [Solomon] continued to work on developing his invention and, sometime prior to October 19, 1992, William Solomon constructed a working prototype.
> 6. On October 19, 1992, my birthday, William Solomon used the prototype of his invention to order flowers for me.
> 7. Photographs of the working prototype William Solomon developed and used on October 19, 1992 are attached hereto as Exhibit B.

Declaration or Miroslaba Recalde, p. 2, bracketed material added. Exhibit B is two different color photographs showing essentially the same components shown Exhibit C attached to Solomon's testimony.

Solomon's evidence fails to establish an actual reduction to practice. Neither Solomon's testimony and exhibits nor Recalde's testimony and exhibits establish the existence of every feature of at least one alternative of the count. Neither the testimony nor photographs establish that the numeric key pad and the computer keyboard were interconnected in the manner required by each of the count alternatives. Thus, the evidence does not show at least the following:

(1) a numeric key pad and a character key pad directly connected to a tone generator (Bhagavatula Claim 1);

(2) a plurality of button groups with each button in the group connect to cause the same output (Bhagavatula Claim 5);

(3) the buttons of the character key pad connected to the connection means interconnecting the buttons of the numeric key pad to a tone generator so that subsets of the character key pad buttons produce the same indication as one of the numeric key pad buttons (Bhagavatula Claim 7);

(4) a numeric keypad and an alphabetic keypad directly connected to a telephone dialing circuit with the alphabetic keys connected with a predetermined mapping to the numeric keys of the telephone (Bhagavatula Claim 9);

(5) switch contacts of the keyboard connecting or connectable to first and second inputs of a dialing circuit to generate a dialing signal and the switch contacts being mapped to the numeric keys of the telephone (Bhagavatula Claim 10 and Solomon Claim 1); and

(6) connecting the switch contacts of an alphabetic key board in a predetermined mapping to the numeric keys of the telephone keypad and generating a telephone dialing signal by pressing a key on the alphabetic keyboard which signal corresponds to the signal generated by pressing a numeric key (Bhagavatula Claim 19 and Solomon Claim 11).

Solomon's and Recalde's testimony that Solomon "used the prototype device to order flowers . . ." is of little evidentiary value in proving an actual reduction to practice. The testimony does not tell us how the device was used to place the call. The testimony does not identify the number that was called or, more importantly, how the number was dialed. As shown in the photographs, the device includes a standard telephone. The telephone, without the use of the key board, could have been used to make the call. Thus, the testimony does not establish, by a preponderance of the evidence, that an operative device was constructed and, if it was constructed, how it was tested.

Solomon has failed to prove an actual reduction to practice of an embodiment within the scope of the count.

3. Conception

Conception is the formation "in the mind of the inventor of a definite and permanent idea of the complete and operative invention, as it is therefore to be applied in practice." Kridl v. McCormick, 105 F.3d 1446, 1449, 41 USPQ2d 1686, 1689 (Fed. Cir. 1997); Mahurkar v. C.R. Bard, Inc., 79 F.3d 1572, 1577, 38 USPQ2d 1288, 1290-91 (Fed. Cir. 1996); Burroughs Wellcome Co. v. Barr Labs., Inc.,

40 F.3d 1223, 1228, 32 USPQ2d 1915, 1919 (Fed. Cir. 1994), cert. denied, 116 S. Ct. 771 (1996); Coleman v. Dines, 754 F.2d 353, 359, 224 USPQ 857, 862 (Fed. Cir. 1985); Gunter v. Stream, 573 F.2d 77, 80, 197 USPQ 482, 484 (CCPA 1978). The idea must be "so clearly defined in the inventor's mind that only ordinary skill would be necessary to reduce the invention to practice, without extensive research or experimentation." Mahurkar, 79 F.3d at 1597, 38 USPQ2d at 1291; Burroughs, 40 F.3d at 1228, 32 USPQ2d at 1919. A conception must include every feature or limitation of the count. Kridl, 105 F.3d at 1449, 41 USPQ2d at 1689. Thus, in order to establish conception, a party must prove possession of every feature stated in the count, and that every limitation of the count must have been known to the inventor at the time of the alleged conception. Coleman, 754 F.2d at 359, 224 USPQ at 862; Davis v. Reddy, 620 F.2d 885, 889, 205 USPQ 1065, 1069 (CCPA 1980). Each express limitation of the count is considered material and cannot be disregarded. Schur v. Muller, 372 F.2d 546, 551, 152 USPQ 605, 609 (CCPA 1967).

Conception can not be proved by the inventor's testimony alone, it must be corroborated. Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1576, 42 USPQ2d 1378, 1381 (Fed. Cir. 1997); Price v. Symsek, 988 F.2d 1187, 1194, 26 USPQ2d 1031, 1033 (Fed. Cir. 1993). "Conception must be proved by corroborating evidence which shows that the inventor disclosed to others his 'complete thought expressed in such clear terms as to enable those skilled in the art' to make the invention." Coleman, 754 F.2d at 359, 224 USPQ at 862 (quoting Fields v. Knowles, 183 F.2d 593, 601, 86 USPQ 373, 379 (CCPA 1950)). However, "there is no final single formula that must be followed in proving corroboration." Berry v. Webb, 412 F.2d 261, 266, 162 USPQ 170, 174 (CCPA 1969). Rather, the sufficiency of corroborative evidence is determined by the "rule of reason." Scott, 34 F.3d at 1061-62, 32 USPQ2d at 1118; Holmwood v. Sugavanam, 948 F.2d 1236, 1238, 20 USPQ2d 1712, 1714 (Fed. Cir. 1991). Price, 988 F.2d at 1195, 26 USPQ2d at 1037; Berry, 412 F.2d at 266, 162 USPQ at 173. Accordingly, we must make a reasonable analysis of all of the pertinent evidence to determine whether the inventor's testimony is credible. Price, 988 F.2d at 1195, 26 USPQ at 1037. We must also bear in mind the purpose of corroboration, which is to prevent fraud, by providing independent confirmation of the inventor's testimony. See Berry, 412 F.2d at 266, 162 USPQ at 173 ("The purpose of the rule requiring

corroboration is to prevent fraud."); Reese v. Hurst , 661 F.2d 1222, 1125, 211 USPQ 936, 940 (CCPA 1981) (" [E]vidence of corroboration must not depend solely on the inventor himself.").

Solomon alleges a date of conception of "January, 1991." Where a period of time rather than a specific date is alleged, the date is presumed to be the last day of the period. Oka, 849 F.2d at 584, 7 USPQ2d at 1172. Thus, Solomon is held to have alleged a conception date of January 31, 1991.

Solomon's declaration states:

> 4. In January of 1991, I conceived of the invention corresponding to the Count. I also then began researching my conception and drawing possible models and electric circuit diagrams.

Preliminary Statement of William Solomon, p. 1, ¶ 4. This broad conclusory statement does not establish a conception including all the limitations of one of the alternatives of the count by that date. Solomon has not submitted any drawings or diagrams or other evidence that shows a conception including every limitation of one of the count alternatives. Indeed, Solomon states that he is no longer in possession of the drawings and diagrams that he made. Solomon also submitted the declaration of Miroslaba Recalde. She testified that:

> In January of 1991, William Solomon explained to me his invention which I understood, in general, as enabling an alphabetic keypad (similar to that of a typewriter) to be used in place of a telephone keypad, thereby allowing a user to dial a series of letters (e.g., "1-800-FLOWERS" and "1-800-DOCTORS") instead of numbers to place a call. At that time, he began researching his idea and drawing possible models and electrical circuit diagrams.

Declaration of Miroslaba Recalde, p. 1, ¶ 4. Recalde's testimony does not show that Solomon had a conception including every limitation of at least one of the alternatives of the count. The testimony at best shows the broad general concept of the invention. Proof of conception must show every feature or limitation set out in the count. Kridl, 105 F.3d at 1449, 41 USPQ2d at 1689. Thus, Solomon has failed to prove a conception by January 31, 1991.

Solomon alleges that he submitted an invention disclosure document to his attorney on November 8, 1993. Solomon also alleges a date for the document of October 16, 1993. Solomon represents that Exhibit D is a copy of that document. Preliminary Statement of William Solomon, p. 1, ¶ 10. Assuming that this document discloses an embodiment meeting one of the alternatives of the count, Solomon has not

provided any evidence corroborating the authenticity and the date of the document. The existence of a document disclosing the conception must be corroborated. Compare, Reese v. Hurst, 661 F.2d 1222, 1231, 211 USPQ 936, 945 (CCPA 1981) (uncorroborated notebooks did not establish the date of invention) with Price v. Symsek, 988 F.2d 1187, 1195, 26 USPQ2d 1031, 1037 (Fed. Cir. 1993) (date and authenticity of documents corroborated by a non-inventor who testified to seeing the document around the time it was dated).

Considering all the evidence relating to conception, Solomon has failed to prove, by a preponderance of the evidence, a date of conception of his invention prior to Bhagavatula's filing effective filing date of December 8, 1993.

4. Diligence

As part of the evidence, Solomon as submitted a sealed envelop. Solomon asserts that

> On November 15, 1993, I wrote and mailed a brief description of invention to myself. The actual sealed envelope, postmarked November 15, 1993 containing this brief description is attached hereto as Exhibit E.

Preliminary Statement of William Solomon, p. 2, ¶ 11. Exhibit E is an apparently sealed envelope bearing the following handwritten address:

> William Solomon
> 4818 W. R[ineligble]
> Chicago, IL 60641

The envelope also bears a return address sticker with the following:

> Mr. William Solomon
> 4818 W. Roscoe St # 2
> Chicago, IL 60641

The letter is post marked:

Chicago, IL
PM
15 Nov
1993

Assuming that the sealed envelope and the document it contains demonstrates a corroborated conception of the invention by November 15, 1993, Solomon must prove reasonable diligence to a reduction to practice. 35 U.S.C. § 102(g). Insufficient evidence has been produced to prove the activities undertaken towards a constructive reduction to practice by filing the application. Solomon asserts that a disclosure document was given to his attorney on November 8, 1993. However, as we indicated above, the existence and date of the document was not corroborated. The record before us also does not explain the activities that were taken from a time prior to, December 8, 1993, (Bhagavatula's effective filing date) to Solomon's filing on December 23, 1993. While this time period is relatively short, a short time period does not excuse the necessity of some proof of diligence during the period. In re Mulder, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983) (Diligence required to be shown even though the gap was only two days). We will not speculate on possible steps that may have been taken. Solomon, as the junior party, has the burden of proving diligence.

Because diligence has not been proved, we do not need to and have not opened the envelope and considered the content of any document contained in it.

D. Bhagavatula's Priority

Since we have held that Solomon has not proved a date of invention prior to Bhagavatula's effective filing date, we have not considered Bhagavatula's evidence on priority.

E. Judgment

For the reasons stated above it is

ORDERED that judgment on priority as to Count 1 (Paper 1, p. 31), the sole count in the interference, is awarded against the junior party WILLIAM SOLOMON.

FURTHER ORDERED that, judgment on priority as to Count 1 is awarded in favor of senior party SATYASI BHAGAVATULA.

FURTHER ORDERED that junior party, WILLIAM SOLOMON, is not entitled to a patent containing claims 1-15 (corresponding to Count 1) of Patent 5,388,154, granted February 7, 1995, based on application 08/173,349, filed December 23, 1993;

FURTHER ORDERED that on the record before the Board of Patent Appeals and Interferences, senior party, SATYASI BHAGAVATULA, is entitled to a patent containing claims 1-22 (corresponding to Count 1) of Application 08/324,849, filed October 14, 1994; and it is

FURTHER ORDERED that a copy of this decision be made of record in the file of Patent 5,388,154 and in application 08/324,849.

FRED E. McKELVEY Senior Administrative Patent Judge	)	
RICHARD E. SCHAFER Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JAMESON LEE Administrative Patent Judge	)	

cc (via Federal Express):

Attorney for SOLOMON

David J. Marr, Esq.
TREXLER, BUSHNELL,
GIANGIORGI
& BLACKSTONE, LTD.
105 W. Adams Street, 36th Floor
Chicago, IL 60603

Tel: 312-704-1890
Fax: 312-704-8023

Attorney for BHAGAVATULA

Michael B. Johannesen, Esq.
LUCENT TECHNOLOGIES, INC.
2000 N. Naperville Road
Naperville, IL 60566

Tel: 630-979-7006
Fax: 630-979-2246